

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

PHILLIP A. MILLER and SUSAN
C. BERRYHILL,

Plaintiffs,

Civ. No. 12-272-CL

TEMPORARY RESTRAINING ORDER

v.

THE BANK OF NEW YORK MELLON,
AS TRUSTEE FOR THE CERTIFICATE
HOLDERS CWMBS, INC., ASSET
BACKED CERTIFICATES, SERIES
2005-3C and RECONTRUST
COMPANY, N.A.,

Defendants.

PANNER, J.

Plaintiffs seek an ex parte temporary restraining order to enjoin the foreclosure sale of their house. Plaintiffs allege the house is scheduled for a foreclosure sale on March 5, 2012, and that defendants have not complied with the legal requirements for a valid non-judicial foreclosure. Specifically, plaintiffs allege defendants failed to record all assignments of the trust deed in the county land records prior to initiating the foreclosure proceedings. In Oregon, a party initiating non-judicial foreclosure proceedings must record all assignments of the trust

deed. ORS 86.735(1); Hooker v. Northwest Trustee Services, Inc., 2011 WL 2119103, *3 (D. Or. May 25) (citing Burgett v. MERS, 2010 WL 4282105, at *2 (D. Or. Oct. 20) and In re McCoy, 2011 WL 477820, at *3-4 (Bankr. D. Or. Feb. 7)). Plaintiffs allege MERS is listed as the beneficiary on the deed of trust at issue.

Because of the alleged imminent foreclosure sale, and because the presence of MERS demonstrates a high probability that defendants did not comply with the recording requirements of the Oregon Trust Deed Act, I grant plaintiffs' request for a temporary restraining order (#3). Defendants, and their officers, agents, etc..., and other persons in active concert or participation with defendants, who receive actual notice of this order, are restrained from conducting a foreclosure sale for the following property: 129 Laurel Street, Ashland, Oregon, from this day until March 14, 2012, at 5:00 p.m. This court will hold a hearing on whether to issue a preliminary injunction at 10:00 a.m. on March 14, 2012, in the James A. Redden Courthouse in Medford.

IT IS SO ORDERED.

DATED this 1 day of March, 2012, at 10:00 a.m.



OWEN M. PANNER
U.S. DISTRICT JUDGE